

HB 115

Introduced by Rep. Julie French, *by request of the Department of Revenue*

HEARING: January 30, 2009

House Committee on Taxation

TESTIMONY OF GEOFF FEISS
MONTANA TELECOMMUNICATIONS ASSOCIATION

I'm Geoff Feiss, General Manager of the Montana Telecommunications Association (MTA). MTA represents small and large telecommunications providers, including member-owned cooperatives and shareholder-owned commercial companies providing advanced voice, data and video services to rural residential and commercial consumers throughout Montana.

Regardless of size or corporate structure, MTA's members share a common goal: to provide state-of-the-art telecommunications services to rural consumers. Collectively, Montana's rural telecom providers invest over \$80 million a year in Montana's telecom capital expenditures.

As all eyes focus on stimulating investment in our economic infrastructure, HB 115 is well timed, and has the potential to spur further investment in our telecom infrastructure—if it is properly applied.

MTA supports HB 115, and we suggest it can be even more broadly applied to achieve an equitable effect that would not discriminate amount telecommunications plant placed in service.

As currently drafted HB 115 picks up where the 2007 Legislature left off. At that time, the Department of Revenue determined that wireless telecommunications property was effectively no different than other telecommunications property and that consequently it should have been centrally assessed, as all other telecom property already is. Legislation that would have moved only wireless property to Class 4 general business and removed it from central assessment was vetoed by the Governor. Both Chambers failed to override the veto. During testimony on the bill, Verizon made a strong case that all telecommunications equipment, whether wireless or wireline, should be taxed in the same manner and at the same rate. Several members of the Legislature and this Committee agreed.

And that's where HB 115 picks up. While MTA has significant problems with the manner in which central assessment is administered by the Department, we can save that discussion for another day. However, the point is as valid today as it was two years ago that all telecommunications plant should be subject to equal tax treatment. That clearly is not the case today.

For example, some telecommunications property is classified under Class 13, and taxed at a 6% rate. Other telecommunications property is Class 5 property, and taxed at 3%. Cooperatives' property is Class 5 property. So is telecommunications property that is placed in service by a company which is "engaged in the business of furnishing telecommunication services exclusively to rural areas or to rural [communities] of 1,200 permanent residents or less."

HB 115 would raise the rural community cap to 10,000 residents. According to the Fiscal Note, "this increase in population threshold will result in 12 companies that are currently in class 13 (taxable rate 6%) being transferred to class five (taxable rate 3%) beginning in tax year 2009." And that's a good start; but we're still far from reaching a state of tax equity, as advocated by Verizon's witness in 2007, whereby all telecommunications investment is treated similarly.

HB 115, as drafted, would provide a 10-year exemption for 50% of the value of rural telecommunications plant placed service for the next ten years, effectively reducing the tax rate on new rural telecom investment to 1.5%. In this regard, there are three clarifications or improvements to the bill that could enhance its effectiveness. First, the bill's title is misleading and should be amended. Second, the bill should be amended to make clear that cooperatives are able to take advantage of the bill's investment incentives. And third, other telecommunications providers serving rural areas should be able to benefit from the investment incentives of HB 115—as a matter of tax equity, sound tax principles and economic stimulus policy.

As for the bill's title, it would appear that the bill is limited to "new rural cell phone property." However, "new rural cell phone property" is defined as "property included in 15-6-135(1)(g)..." Section 15-6-135(1)(g) refers to "all property used and owned by a person that is engaged in the business of furnishing telecommunications services exclusively to rural areas..." In other words, the definition of "rural cell phone property" does not say anything about cell phone property. Instead it refers—properly—to all property.

However, "all property" is somewhat vague in itself. For example, does a cooperative qualify for the new plant in service exemption. Since the exemption applies only to subsection 135(1)(g), and cooperatives are classified under subsection 135(1)(a), would cooperatives be eligible for the investment incentive? It is not clear whether a cooperative, with its own classification, would be permitted to take advantage of the tax exemption which applies to a different subsection of Class 5.

Finally, all of Montana's telecommunications providers—including Qwest, Verizon and Alltel—serve rural areas. MTA supports HB 115 as currently drafted because it provides investment incentives for new telecom investment in rural Montana by telecommunications companies, regardless of who they are. It does not favor one provider over another. Rather, it targets incentives to rural Montana. However, the bill still falls short of equitably providing investment incentives by limiting investment only to companies that serve exclusively rural areas. So, a company that serves both rural and non-rural areas (defined as communities with populations in excess of 10,000 permanent residents) is not eligible for the tax credit.

MTA respectfully suggests that HB 115 apply to any investment by telecommunications providers in rural areas. We would be happy to work with the committee to craft language that further enhances the investment effectiveness of this bill.

On the other hand, MTA opposes any changes to the bill which would result in narrowing the bill to apply only to certain types of carriers under certain circumstances. Such special treatment for special interests further complicates the code and puts the Legislature in the position of supporting discriminatory tax policy in behalf special interest advocates.

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